

Myron D. Rumeld (MR-3941)  
Bridgit M. DePietto (BD-1110)  
Howard Shapiro (*admitted pro hac vice*)  
Robert W. Rachal (*admitted pro hac vice*)  
Nicole A. Eichberger (*admitted pro hac vice*)  
Page W. Griffin (*admitted pro hac vice*)  
Proskauer Rose LLP  
Eleven Times Square  
New York, NY 10036-8299  
*Attorneys for Defendants*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

**GEOFFREY OSBERG**

**On behalf of himself and on  
behalf of all others similarly situated**

**Plaintiffs,**

**v.**

**FOOT LOCKER, INC. and  
FOOT LOCKER RETIREMENT PLAN,  
Defendants.**

07 Civ. 1358 (KBF)

**ECF CASE**

**DECLARATION OF HOWARD  
SHAPIRO IN SUPPORT OF  
DEFENDANTS' OPPOSITION TO  
PLAINTIFF'S MOTION  
FOR SANCTIONS**

I, HOWARD SHAPIRO, pursuant to 28 U.S.C. §1746, state as follows:

1. I am an attorney at law admitted pro hac vice in the United States District Court for the Southern District of New York. I am a Partner at the law firm of Proskauer Rose LLP, counsel of record for Defendants.

2. I submit this Declaration for the limited purpose of identifying exhibits that are referenced in Defendants' Opposition to Plaintiff's Motion for Sanctions:

3. Attached as Exhibit 1 is the Class Action Complaint in *Luis Patino v. Foot Locker Retirement Plan, et al.*, No. 06-cv-4879, United States District Court for the Southern District of New York.

4. Attached as Exhibit 2 is Plaintiff's Notice of Voluntary Dismissal in *Luis Patino v. Foot Locker Retirement Plan, et al.*, No. 06-cv-4879, United States District Court for the Southern District of New York.

5. Attached as Exhibit 3 is the Class Action Complaint in *Geoffrey T. Osberg v. Foot Locker, Inc.*, No. 06-cv-6620, United States District Court for the Northern District of Illinois, Eastern Division.

6. Attached as Exhibit 4 is the Notice of Voluntary Dismissal in *Geoffrey T. Osberg v. Foot Locker, Inc.*, No. 06-cv-6620, United States District Court for the Northern District of Illinois, Eastern Division.

7. Attached as Exhibit 5 the transcript of the Deposition of Dennis Sheehan, taken June 21, 2012.

8. Attached as Exhibit 6 is the Affidavit of Sheilagh Clarke, dated September 21, 2012.

9. Attached as Exhibit 7 is an e-mail from Nicole Eichberger dated July 6, 2006 re Patino v. Foot Locker: July 6, 2006 Initial To Do List (Bates no. FL-PRIV 00163).

10. Attached as Exhibit 8 is a letter from Carla R. Walworth to Matthew C. Norgard, dated May 31, 2012.

11. Attached as Exhibit 9 is an e-mail from Robert W. Rachal dated January 30, 2007 re Follow up With Mercer (Bates no. FL-PRIV 000335).

12. Attached as Exhibit 10 is an e-mail from Nicole Eichberger dated May 31, 2012 re Confidential: Foot Locker (Osberg) (Bates no. FL-PRIV 000329-330).

13. Attached as Exhibit 11 is a collection of e-mails and documents regarding document collection and identifying witnesses.

14. Attached as Exhibit 12 is the transcript of the 30(b)(6) deposition of Nicole Eichberger, dated August 15, 2012.

15. Attached as Exhibit 13 is the October 8, 2009 Memorandum from Dennis Sheehan re Document Preservation Hold (FL-OSB 022900-904).

16. Attached as Exhibit 14 is the Declaration of Nicole Eichberger dated March 21, 2012.

17. Attached as Exhibit 15 is the Affidavit of Patricia Peck, dated September 21, 2012.

18. Attached as Exhibit 16 are e-mails from Page Griffin regarding Plan Participant Data dated January 27, 2012.

19. Attached as Exhibit 17 is the Affidavit of Marie Campbell dated September 21, 2012.

20. Attached as Exhibit 18 is the deposition of Patricia Peck, dated September 11, 2012.

21. Attached as Exhibit 19-A is a chart entitled "Defendants' Chart Regarding Box I.D. Slips Referenced in the Affidavit of Patricia Peck"; Exhibit 19-B is a chart entitled "Box I.D. Slips Referencing Boxes Containing Previously Produced Documents or Boxes Containing Non-Relevant Documents".

22. Attached as Exhibit 20 are document collection indexes (Bates no. FL-PRIV 000223-232; FL-PRIV 000313-314; and FL-OSB 022988-023001).

23. Attached as Exhibit 21 are Defendants' Responses and Objections to Plaintiff's Fifth Set of Discovery Requests, dated May 31, 2012.

24. Attached as Exhibit 22 are letters from Matthew C. Norgard, Gottesdiener Law Firm PLLC, dated March 18, 2012 and March 26, 2012 regarding the litigation hold notice.

25. Attached as Exhibit 23 are letters from Proskauer to Eli Gottesdiener dated March 21, 2012, March 28, 2012, April 2, 2012 and April 24, 2012 regarding document preservation.

26. Attached as Exhibit 24 are handwritten notes (Bates nos. FL-OSB 002343-2345; FL-OSB 002376-2377; FL-OSB 002532-2534; and FL-OSB 002304-2306).

27. Attached as Exhibit 25 is the 30(b)(6) Notice of Deposition of Proskauer Rose LLP dated March 20, 2012.

28. Attached as Exhibit 26 a letter from Matthew C. Norgard to Carla R. Walworth, Esq. dated March 21, 2012.

29. Attached as Exhibit 27 is the March 1, 2012 Declaration of Nicole Eichberger and documents Bates nos. FL-OSB 012039-44.

30. Attached as Exhibit 28 is a joint letter to Honorable Katherine B. Forrest dated April 6, 2012.

31. Attached as Exhibit 29 is Defendants' correspondence related to Plaintiff's demand for new information.

32. Attached as Exhibit 30 is Plaintiff's correspondence regarding document preservation.

33. Attached as Exhibit 31 is a letter from Myron Rumeld to Eli Gottesdiener dated June 6, 2012.

34. Attached as Exhibit 32 is the Notice of Deposition of Defendant Foot Locker Inc. dated March 20, 2012.

35. Attached as Exhibit 33 is correspondence regarding Rule 30(b)(6) deponents.

36. Attached as Exhibit 34 is correspondence regarding Plaintiff's last minute cancellation of the remaining Rule 30(b)(6) deposition.

37. Attached as Exhibit 35 is a index entitled "Foot Locker Headquarters File Room Index, 2/9/10 – 2/11/10" (Bates no. 022999-3001).

38. Attached as Exhibit 36 is an index entitled "City Storage boxes we want".

39. Attached as Exhibit 37 is an Affidavit of Dennis Sheehan dated September 21, 2012.

40. Carol Kanowicz underwent open heart surgery on Tuesday, September 11, 2012 and was unable to execute an affidavit as to the issues in this matter.

I state under penalty of perjury that the foregoing is true and correct.

DATED: September 21, 2012

/s/ Howard Shapiro  
Howard Shapiro